

Commonwealth of Virginia

PRIVATE SECURITY SERVICES ADVISORY BOARD

July 17, 2003
Quarterly Meeting Minutes

Held at the Four Points Sheraton Harrisonburg, Harrisonburg, Virginia

Call to Order:

At approximately 10:00 a.m., Chair Mary Kay Wakefield called the meeting to order for the Private Security Services Advisory Board (PSSAB).

Attendees:

Chair Mary Kay Wakefield, Vice Chair P. Robbie Robertson, Jr., Secretary Dennis A. VanDuzee, Sean D. Creamer, Brent Fortner, R. Stephen Martin, Deborah Aylward, Robert Shuster and Christopher J. DiMartino.

Absent:

Lt. Paul Midgett, Clyde Sparks and Kevin Hodges were unable to attend.

Opening Remarks:

Chair Wakefield welcomed everyone in attendance to the PSSAB meeting. Ms. Wakefield congratulated Mr. Christopher J. DiMartino on his appointment as the new Private Investigative Representative to the Private Security Services Advisory Board. Chair Wakefield also acknowledged and thanked Mr. Clyde Sparks who was rotated off the Board, for his contributions during his six year tenure on the PSSAB. Mr. Robert Shuster was re-appointed to the board for two additional years as the Personal Protection Specialist Representative.

Approval of Minutes:

Minutes for the March 25, 2003, Private Security Services Advisory Board meeting were reviewed. A motion was made by Ms. Aylward and seconded by Mr. Fortner to approve the minutes. Minutes were unanimously approved.

Election of Officers:

A motion was made by Mr. Fortner and seconded by Ms. Aylward to nominate Ms. Wakefield as Chair for the PSSAB.

A motion was made by Mr. Aylward and seconded by Mr. Creamer to close the nominations. Motion passed unanimously.

Chair, Mary Kay Wakefield called for a vote on the motion to nominate Ms. Wakefield as Chair for PSSAB. Motion passed unanimously.

A motion was made by Mr. Martin and seconded by Mr. Creamer to nominate Mr. Robertson as Vice Chair for the PSSAB. Motion passed unanimously.

A motion was made by Mr. Fortner and seconded by Ms. Aylward to close the nominations. Motion passed unanimously.

Chair, Mary Kay Wakefield called for a vote on the motion to nominate Mr. Robertson as Vice Chair for PSSAB. Motion passed unanimously.

Ms. Wakefield, Chair, appointed Mr. VanDuzee as secretary for PSSAB.

Public Comment:

John Kochensparger

- The lines at the Department of Motor Vehicles (DMV) are costing the industry money in the form of employee salaries for employees to stand in a DMV line and costing the industry manpower to get the jobs done by having employees who must obtain a photo identification card from DMV wait in a DMV line to obtain a photo ID before they can work in the industry. Mr. Kochensparger suggested that DMV use photo already on file, like they do for a driver's license, then they could do the photo identification cards through the mail. DCJS could notify DMV electronically of registrants who need an ID, DMV could mail them out. No lines, no loss of manpower or paying employees to stand in lines.
- Ms. Hahn reported that a meeting has already been scheduled with DMV to discuss this possibility.

DCJS Report:

Ms. Hahn , Interim Section Chief discussed the following:

- The PSSAB Orientation Manual was updated with the following information:
 - a. PSSAB member list
 - b. Private Security Staff list
 - c. Code of Virginia effective changes as of July 1, 2003
 - d. Watson Handout.
- The Private Security Services proposed regulations are submitted for final approval and are posted on DCJS website. The tentative effective date is October 8, 2003
- The new position for Conservators of the Peace has been advertised. The individual duties will concentrate on development of the program, the training program and assist in the drafting of the emergency regulations, plus some administrative and regulatory duties. DCJS must report to the Crime Commission on the Conservator of the Peace program prior to December 1, 2003.
- The Private Security Services Conference is on schedule and a brochure will be mailed out this week to the industry.
- In conjunction with the Commonwealth's budget reduction plan, \$255,000 was pulled from the Private Security Services Regulatory fund on July 30, 2003 and another

\$255,000 will be pulled next year. Additionally, DMV has provided us with notice that the cost of the identification card will increase from \$7 to \$10 per card. Ms. Hahn is concerned with meeting budget for FY 05 because revenue will be generated only from initial applications because everything will be on a two year cycle. She may have to consider other changes perhaps a fee structure adjustment to create additional revenue. She asked for folks to think creatively and offer any potential options that may assist with budgeting concerns.

- Ms. Hahn shared her thoughts and offered the following:
 - a. Review what we do and what we are legally required to do and perhaps eliminate some of the things we do as a courtesy
 - b. Charge for recovery of the cost of the investigation on all founded cases
 - c. Special Conservators of the Peace Program will bring additional revenue into program
 - d. Issue photo ID for Initial Registrants, decals for Renewal that would be generated by DCJS
 - e. Work with DMV toward mail and online renewal for the identification cards
 - f. Only hold training and board meetings where the room is complimentary
 - g. Have investigators concentrate on unlicensed activity
 - h. Have staff trained in fingerprinting and charge a fee for rolling prints.
 - i. Working on new training initiatives to generate revenues
 - j. Request PSSAB to form workgroups to offer recommendations to the department on ways to cut costs.
- Due to our decreased staffing levels, we have made some positive changes in order to accomplish our goals. Robert Tortolani and Robert Hood will be moving into the field as investigators. Ellie Culbertson will become the Compliance Specialist. Burt Walker will oversee the compliance and training coordinator responsibilities.

Mr. Walker discussed the following:

Since the last PSSAB meeting the following training has been completed.

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| • Compliance Agent Entry Level | 150 |
| • Compliance Agent In-Service | 228 |
| • General Instructor Entry-Level | 14 |
| • General Instructor In-Service | 15 |
| • Firearm Instructor Entry Level | 17 |
| • Firearm Instructor In-Service | 26 |
| • Fingerprint Training | 22 |

- Defensive Tactics Instructor Courses is tentatively scheduled for the week of August 25, 2003.
- Firearms Instructor Course being put together for the fall.
- Advanced Handgun Instructor Course.
- Update Compliance Agent Reference Manual for New Regulations
- Update Compliance Agent entry level and in-service courses.
- Updates General and Firearm Instructor entry-level and in-service courses.

Ms. Wakefield, Chair appointed Mr. Shuster to Chair and Brent Fortner to serve on a committee to review and make recommendation for DCJS budget concerns. Plan to schedule 1st meeting soon.

UNFINISHED BUSINESS

Mr. Fortner reported on Virginia Homeland Security. Mr. Fortner opinion is that there is a definite interest to pursue how the private security industry can assist the Virginia Homeland Security.

Ms. Wakefield, Chair appointed Mr. Fortner and Mr. Creamer to Co-Chair a new committee on Homeland Security.

NEW BUSINESS

Mr. Robertson made a motion and seconded by Mr. DiMartino to suspend the industry meeting the evening before the PSSAB meeting held during the Private Security Services Conference. The Industry could use the 6-8 social time scheduled to discuss industry matters prior to the PSSAB meeting. The motion failed unanimously.

Mr. Robertson made a motion and seconded by Mr. Martin to put the Industry Meeting in the hands of the Associations on a voluntary basis to improve the organization and facilitation of the meeting. Mr. Emil Wigefield is to be the key contact person at this point. The motion was unanimously approved.

Ms. Wakefield identified the following associations as possible representatives: Private Investigators Association of Virginia(PIAVA); Professional Investigators and Security Association PISA; Virginia Burglar & Fire Alarm Association, Inc. (VBFAA); Virginia Security Association (VSA) and businesses, corporation or individuals.

Committee Reports:

Training Committee

Mr. Martin stated that the Training Committee would wait until the new regulations are in effect before the next review.

Legislative Committee

Mr. Sean Creamer stated that he forwarded a report to the legislative committee on proposed language as it relates to Freedom of Information Act. (See Attachment A, as it relates to section 2.2-3705)

Ms. Aylward stated that the Legislative Committee Meeting was held on June 30, 2003 and out of nine proposed items, four were accepted for further study or finalization. See attachments A, B, C and D.

- A. Definition of Compliance Agent, designate rather than employ
- B. Detector Dogs and Handlers
- C. FOIA – Add DCJS to certain exclusions under FOIA
- D. 9.1-139 Licensing, Certification and Registration qualifications. Create new requirement that registrants must be Lawful Permanent Residents.

Ms. Aylward stated that the Sub-Committee for How the Code relates to Private Investigators had an organizational meeting on June 30, 2003 and they decided that court access is of primary concern but not determined if possible to take legislative action. The next report will be giving at the October 2003 PSSAB meeting.

Public Comment: (After legislative meeting)

- Mr. Peters stated that he felt all funds generated by Private Security Services should be used for the Private Security Services Section budget for operating expenses. He stated he would be looking at ways to gather support for his position and petition the State to prevent Private Security Services funds being taken for uses in other areas of the State budget.
- Larry Daniels – Compliance Agent situation, years past you did not have to be an employee, that system did work.
- George Rontopoulos – U. S. Citizens and naturalized citizens okay. Mr. Rontopoulos feels that “green card” people are not okay to work in Private Security if they won’t make a commitment to be U. S. Citizens.
- John Kochensparger – Regarding Mr. Robertson’s comments on Compliance Agents, what I have done a number of times is assist companies until they can qualify their own compliance agent. I do it temporarily, they put their own person in and I step out.
- Martha Clancy – Compliance Agent, designation gives discretion to owner of company to use who wants to use without having to worry about the employee relationship. Though I certainly believe that it is necessary to maintain a legal relationship and I don’t see that that this will change at all. The concept of being a

broker never entered into it at all. It is clearly the same system, a person being a compliance agent for only 1 company.

Harold McCann Committee

Steve Martin, Committee Chair moved that the Harold McCann Award Sub-Committee of the Private Security Services Advisory Board convene in Closed Meeting (Executive Session) pursuant to Section 2.2-3711 paragraph A.10 Code of Virginia for consideration or discussion of honorary degrees or special awards in the matter of Harold McCann Award. Additional, I recommend that Lisa Hahn attend the Closed Meeting (Executive Session) because her presence in the Closed Meeting (Executive Session) is deemed necessary. Ms. Aylward seconded the motion. The motion carried unanimously.

Closed Session:

Mr. Martin made a motion and second by Ms. Aylward to go into executive session per 2.2-3711 to discuss the nominees of the Harold L. McCann Memorial Award. The motion was unanimously approved.

Mr. Martin certified that the board complied with the guidelines of 2.2-3711.

Next PSSAB meeting:

The next PSSAB meeting will be held at 10 a.m. on October 7, 2003 at the Sheraton Oceanfront Hotel, Virginia Beach, Virginia. Also tentative PSSAB meeting dates were scheduled for

- Tuesday, December 2, 2003 in Northern Virginia
- Tuesday, March 23, 2004 in Lynchburg, Virginia
- Tuesday, July 13, 2004 in Richmond, Virginia

Adjournment:

With no further business, Mr. Fortner made a motion to adjourn and Mr. VanDuzee seconded it. The motion was unanimously approved.

Public Attendees:

Larry Daniel
Judith Daniel
James H. Rowe
John Kochensparger
George Haudricourt
Larry A. Peters
Martha M. Clancy
Emil J. Wengel
Jerry A. Moore

Donald L. Lemish
Beverly Rowe
George Rontopoulos

Attachment A

To: Legislative Sub-Committee

From: DCJS - PSSS

Date: June 25, 2003

Re: Recommendation for legislative action for 2004

Currently there are no provisions in the FOIA that exempts the release of information from the Department of Criminal Justice Services to the public.

We have reviewed §2.2-3705 have inserted language in bold to identify where language should be amended to protect this release of information. Numbers 82 and 83 were added to ensure that additional information would not be disclosed to the public.

We hope, the legislative committee will review this document and will recommend similar legislation action for 2004 regarding Freedom of Information Act exemptions.

§ 2.2-3705. Exclusions to application of chapter.

A. The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records of all investigations of applications for licenses and permits, and all licensees and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, **the Department of Criminal Justice Services** or the Charitable Gaming Commission.

2. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § [58.1-3](#).

3. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of eighteen years. For scholastic records of students under the age of eighteen years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

4. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

5. Medical and mental records, except that such records may be personally reviewed by the subject person or a physician of the subject person's choice. However, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Medical records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and copying as provided in § [2.2-3704](#). No such summaries or data shall include any patient-identifying information. Where the person who is the subject of medical and mental records is under the age of eighteen, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a public institution of higher education, the right of access may be asserted by the subject person.

6. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly or the Division of Legislative Services; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However, no record, which is otherwise open to inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.

As used in this subdivision:

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor has delegated his authority pursuant to § [2.2-104](#).

7. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other records protected by the attorney-client privilege.

8. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § [2.2-3711](#).

9. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

10. Library records that can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

11. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body.

As used in this subdivision, "test or examination" shall include (a) any scoring key for any such test or examination and (b) any other document that would jeopardize the security of the test or examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by law, or limit access to individual records as provided by law. However, the subject of such employment tests shall be entitled to review and inspect all records relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

12. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

13. Records of active investigations being conducted by **the Department of Criminal Justice Services**, the Department of Health Professions or by any health regulatory board in the Commonwealth.

14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § [2.2-3711](#). However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

15. Reports, documentary evidence and other information as specified in §§ [2.2-706](#) and [63.2-104](#).

16. Proprietary information gathered by or for the Virginia Port Authority as provided in § [62.1-132.4](#) or § [62.1-134.1](#).

17. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

18. Vendor proprietary information software that may be in the official records of a public body. For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

19. Financial statements not publicly available filed with applications for industrial development financings.

20. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.

21. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

22. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for business, trade and tourism development; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and where, if such records are made public, the financial interest of the governmental unit would be adversely affected.

23. Information that was filed as confidential under the Toxic Substances Information Act (§ [32.1-239](#) et seq.), as such Act existed prior to July 1, 1992.

24. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

25. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

26. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

27. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § [28.2-204](#).

28. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ [32.1-323](#) et seq.) of Title 32.1.

29. Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § [30-110](#) or of formulating advisory opinions to members on standards of conduct, or both.

30. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.

31. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ [2.2-3900](#) et seq.) or under any local ordinance adopted in accordance with the authority specified in § [2.2-2638](#), or adopted pursuant to § [15.2-965](#), or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

32. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ [63.2-1700](#) et seq.) and 18 (§ [63.2-1800](#) et seq.) of Title 63.2. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

33. Personal information, as defined in § [2.2-3801](#), (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § [36-4](#) concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § [36-4](#) or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § [15.2-2304](#) or § [15.2-2305](#). However, access to one's own information shall not be denied.

34. Records regarding the siting of hazardous waste facilities, except as provided in § [10.1-1441](#), if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.

35. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

36. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

37. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

38. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ [58.1-4014](#) through [58.1-4018](#), (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon completion of the study or investigation.

39. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit that would identify specific trade secrets or other information the disclosure of which would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

40. Records concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ [2.2-1832](#) et seq.) of Chapter 18 of this title, or by any county, city, or town.

41. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ [32.1-111.1](#) et seq.) of Chapter 4 of Title 32.1.

42. Reports and court documents required to be kept confidential pursuant to § [37.1-67.3](#).

43. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i) Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; or (iv) committee or the auditor with respect to an investigation or audit conducted pursuant to § [15.2-825](#). Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person.

44. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

45. Documentation or other information that describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

46. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.
47. Records of the Virginia Retirement System, acting pursuant to § [51.1-124.30](#), or of a local retirement system, acting pursuant to § [51.1-803](#), or of the Rector and Visitors of the University of Virginia, acting pursuant to § [23-76.1](#), relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or provided to the retirement system under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system or the Rector and Visitors of the University of Virginia. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.
48. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.
49. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ [32.1-331.12](#) et seq.) of Chapter 10 of Title 32.1.
50. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.
51. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.
52. Information required to be provided pursuant to § [54.1-2506.1](#).
53. Confidential information designated as provided in subsection D of § [2.2-4342](#) as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § [2.2-4317](#).
54. All information and records acquired during a review of any child death by the State Child Fatality Review team established pursuant to § [32.1-283.1](#), during a review of any child death by a local or regional child fatality review team established pursuant to § [32.1-283.2](#), and all information and records acquired during a review of any death by a family violence fatality review team established pursuant to § [32.1-283.3](#).
55. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ [51.5-53](#) et seq.) of Title 51.5.
56. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a proposal filed with a public entity or an affected local jurisdiction under the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.), pursuant to a promise of confidentiality from the responsible public entity or affected local jurisdiction, used by the responsible public entity or affected local jurisdiction for purposes related to the

development of a qualifying transportation facility or qualifying project; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002, where, if such records were made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this subdivision, the terms "affected local jurisdiction", "public entity" and "private entity" shall be defined as they are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002.

57. Plans to prevent or respond to terrorist activity, to the extent such records set forth specific tactics, or specific security or emergency procedures, the disclosure of which would jeopardize the safety of governmental personnel or the general public, or the security of any governmental facility, building, structure, or information storage system.

58. All records of the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

59. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § [32.1-276.9](#), to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § [32.1-276.4](#).

60. Records of the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

61. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected, and, after June 30, 1997, where such information was provided pursuant to a promise of confidentiality.

62. Confidential proprietary records that are provided by a franchisee under § [15.2-2108](#) to its franchising authority pursuant to a promise of confidentiality from the franchising authority that relates to the franchisee's potential provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the franchisee shall

(i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

63. Records of the Intervention Program Committee within the Department of Health Professions, to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § [54.1-2517](#).

64. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ [51.5-12.1](#) et seq.) of Title 51.5, to the extent such records contain (i) medical or mental records, or other data identifying individual patients or (ii) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

65. Information that would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

66. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Charitable Gaming Commission pursuant to subsection E of § [18.2-340.34](#).

67. Personal information, as defined in § [2.2-3801](#), provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ [23-38.75](#) et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

68. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ [32.1-137.4](#) and [32.1-137.5](#), including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

69. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility, building or structure or the safety of persons using such facility, building or structure.

70. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ [3.1-622](#) and [3.1-624](#).

71. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

72. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

73. Records of the Virginia Office for Protection and Advocacy consisting of documentary evidence received or maintained by the Office or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Office and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Office may not at any time release the identity of any complainant or person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

74. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ [2.2-1000](#) et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

75. Trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.) of Title 59.1, submitted by CMRS providers as defined in § [56-484.12](#) to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § [56-484.15](#), relating to the provision of wireless E-911 service.

76. Records of the State Lottery Department pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations, and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

77. Records, information and statistical registries required to be kept confidential pursuant to §§ [63.2-102](#) and [63.2-104](#).

78. Personal information, as defined in § [2.2-3801](#), including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record.

79. (For effective date, see note) All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ [54.1-2519](#) et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

80. Communications and materials required to be kept confidential pursuant to § [2.2-4119](#) of the Virginia Administrative Dispute Resolution Act.

81. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints made to a local governing body.

B. Neither any provision of this chapter nor any provision of Chapter 38 (§ [2.2-3800](#) et seq.) of this title shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 4. of subsection A; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

C. No provision of this chapter or Chapter 21 (§ [30-178](#) et seq.) of Title 30 shall be construed to afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ [53.1-261](#) et seq.). However, this subsection shall not be construed to prevent an incarcerated person from exercising his constitutionally protected rights, including, but not limited to, his rights to call for evidence in his favor in a criminal prosecution.

D. Nothing in this chapter shall be construed as denying public access to the nonexempt portions of a report of a consultant hired by or at the request of a local public body or the mayor or chief executive or administrative officer of such public body if (i) the contents of such report have been distributed or disclosed to members of the local public body or (ii) the local public body has scheduled any action on a matter that is the subject of the consultant's report.

82. Official records of the Department of Criminal Justice Services in this title shall be subject to the disclosure provisions of the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.), except for the following:

- 1. Examination questions, papers, booklets and answer sheets which may be disclosed at the discretion of the Private Security Section Chief.**
- 2. Records of active investigations, adjudication and post adjudication, being conducted by the Department of Criminal Justice Services.**
- 3. The social security number, dates of birth, tax identification number, state sales tax number, home address and telephone number.**
- 4. Confidential financial statements, balance sheets, trade secrets of a regulant.**

83. Records of the Department of Criminal Justice Services relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

(1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830.)

Attachment B

DCJS-PSS RECOMMENDATION FOR LEGISLATIVE CHANGE

On June 20, 2003, a Federal Court Jury returned a verdict of guilty on 25 counts of wire fraud and 2 counts of making false statements to the Federal Government against Russell L. Ebersole.

In January, 2002, an investigative task force consisting of investigators from the Federal Reserve, Department of State, IRS, FEMA, ATF and the Virginia Department of Criminal Justice Services Private Security Services Section. This task force investigated complaints of fraud by Russell Ebersole, the owner of Detector Dogs Against Drugs and Explosives. Mr. Ebersole is also the owner and training director of Aberdeen Acres Canine Training Academy, a DCJS Private Security Services Training School.

The investigation revealed that Mr. Ebersole committed fraud by supplying poorly trained explosive detector dogs and untrained detector dog handlers to the federal government in the wake of 9-11. It was discovered during this investigation that there are no state or federal training requirements for qualifying detector animals or handlers or certification requirements for other than law enforcement use. The Code of Virginia §9.1-138 Definitions specifically removes detector dogs from the definition of security canine.

The responsibility “to secure the public safety and welfare against incompetent, unqualified, unscrupulous, or unfit persons engaging in the activities of private security services businesses” necessitates changes in the Code of Virginia §9.1-138 thru 9.1-150 to regulate the use of “detector animals” for the purposes of (i) safeguard and protect persons and property or (ii) prevent theft, loss, or concealment of any tangible or intangible personal property on the premises contracted to protect.

Since the tragedy of September 11, 2001, the use of and demand for explosive detection animals has increased dramatically. There is competent training available for private sector detection animals. However, there are no testing or certification requirements to legitimize the capabilities of the animal or handler.

Fortunately, there were no attacks on any of the sites where Detector Dogs Against Drugs and Explosives were assigned. The fact that the Federal Reserve investigators conducted blind test on the detector dogs using 50 pounds of dynamite in one test and 50 pounds of 'tnt' in a different test demonstrates the potential for significant loss of life and property.

The intent of this request for legislative change to create regulatory control of the use of detector animals for the protection of life and property, or the use of detector animals by who engages in the business of, or accepts employment to make, investigations to obtain information on (i) crimes or civil wrongs; (ii) the location, disposition, or recovery of stolen property; (iii) the cause of accidents, fires, damages, or injuries to persons or to property; or (iv) evidence to be used before any court, board, officer, or investigative committee.

Attachment C

§ 9.1-138. Definitions.

In addition to the definitions set forth in § [9.1-101](#), as used in this article, unless the context requires a different meaning:

"Certification" means the method of regulation indicating that qualified persons have met the minimum requirements as private security services training schools, private security services instructors, compliance agents, unarmed security officers, electronic security employees, *“detector animals and handlers*, or electronic security technician's assistants.

“Detector animal” means any animal used for the purpose of detection of substances detrimental to the protection of life and property, or the use of detector animals by those who engage in the business of, or accepts employment to make, investigations to obtain information on (i) crimes or civil wrongs; (ii) the location, disposition, or recovery of stolen property; (iii) the cause of accidents, fires, damages, or injuries to persons or to property; or (iv) evidence to be used before any court, board, officer, or investigative committee.

"Private security services business" means any person engaged in the business of providing, or who undertakes to provide, armored car personnel, security officers, personal protection specialists, private investigators, couriers, security canine handlers, security canine teams, *detector animals, detector animal handlers*, alarm respondents, central station dispatchers, electronic security employees, electronic security sales representatives or electronic security technicians and their assistants to another person under contract, express or implied.

"Private security services registrant" means any qualified individual who has met the requirements under this article to perform the duties of alarm respondent, armored car personnel, central station dispatcher, courier, electronic security sales representative, electronic security technician, personal protection specialist, private investigator, security canine handler, *detector animals*, *detector animal handlers* or armed security officer.

"Security canine" means a dog that has attended, completed, and been certified as a security canine by a certified security canine handler instructor in accordance with approved Department procedures and certification guidelines. ~~[Delete]~~**Security canines"**
shall not include detector dogs.

Attachment D

§ 9.1-139. Licensing, certification, and registration required; qualifications; temporary licenses.

C. No person shall be employed by a licensed private security services business in the Commonwealth as armored car personnel, courier, armed security officer, security canine handler, ***detector animal handler***, private investigator, personal protection specialist, alarm respondent, central station dispatcher, electronic security sales representative or electronic security technician without possessing a valid registration issued by the Department, except as provided in this article.

E. A temporary registration may be issued in accordance with Board regulations for the purpose of awaiting the results of the state and national fingerprint search. However, no person shall be issued a temporary registration until he has (i) complied with, or been exempted from the compulsory minimum training standards established by the Board, pursuant to subsection A of § [9.1-141](#), for armored car personnel, couriers, armed security officers, security canine handlers, ***detector animal handler***, private investigators, personal protection specialist, alarm respondents, central station dispatchers, electronic security sales representatives or electronic security technicians, (ii) submitted his fingerprints to be used for the conduct of a National Criminal Records search and a Virginia Criminal History Records search, and (iii) met all other requirements of this article and Board regulations.